

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--------------------------------------------------|--------------------------------------------|---------------------------|-------------------------------------------------------|------------------------------------|--------------------------------------------|
| Investigator: Daniel Giansante | Team: Squad #14 | CCRB Case #: 201505545 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Monday, 07/06/2015 5:10 PM | Location of Incident: 30 Fayette Street | Precinct: 83 | 18 Mo. SOL 1/6/2017 | EO SOL 1/6/2017 | |
| Date/Time CV Reported Tue, 07/07/2015 8:40 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 07/07/2015 8:40 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. POM Juan Morales | 31941 | 955219 | PBBN |
| 2. Officers | | | PBBN |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. SGT Junior Carela | 00541 | 929827 | PBBN |
| 2. POM Patrick Marsteller | 31938 | 955128 | PBBN |
| 3. POM Steven Ulrich | 13841 | 954532 | PBBN |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|--------------------------------------------------------|-----------------------------|
| A. Officers | Force: Officers used physical force against § 87(2)(b) | |
| B.POM Juan Morales | Abuse: PO Juan Morales frisked § 87(2)(b) | |
| C.POM Juan Morales | Abuse: PO Juan Morales searched § 87(2)(b) | |

Case Summary

On July 6, 2015, at approximately 5:10 p.m., PO Juan Morales of Patrol Borough Brooklyn North stopped § 87(2)(b) as he rode a motorcycle south on Fayette Street between Beaver Street and Broadway in Brooklyn. § 87(2)(b) refused to dismount the motorcycle and PO Morales and other officers pulled him to the ground (**Allegation A**). The motorcycle allegedly sustained minor damage from falling to the ground (**within Allegation A**). After § 87(2)(b) was handcuffed, PO Morales frisked his entire body (**Allegation B**). PO Morales also searched § 87(2)(b) (**Allegation C**). PO Morales issued § 87(2)(b) a summons for the § 87(2)(b) (BR01).

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation § 87(2)(b)
- § 87(2)(b) has not filed a Notice of Claim regarding the incident with the NYC Comptroller's office as of September 15, 2015 (BR02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first complaint with the CCRB (BR04).
- PO Juan Morales has been a member of the NYPD for two years and has had one previous CCRB allegation involving one case, which was not substantiated. He also has six allegations, including an allegation of frisk and an allegation of search, in an open case (see officer history).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that all four officers present at the incident grabbed him to bring him off the motorcycle. PO Morales claimed that he was the only officer to grab § 87(2)(b). Sgt. Carela recounted that PO Morales, PO Ulrich, and PO Marsteller grabbed § 87(2)(b). § 87(2)(b) § 87(2)(g)
- § 87(2)(b) specifically alleged that one of the other officers present, and not PO Morales, searched his pockets and retrieved his identification. However, PO Morales admitted that he frisked § 87(2)(b) and entered his back pocket to retrieve his wallet. § 87(2)(g)

Allegations not pleaded

- **Vehicle stop:** PO Morales stopped § 87(2)(b) for the loud exhaust on his motorcycle and issued him a summons for the infraction. § 87(2)(g)
- **Property Damage:** The alleged damage to the motorcycle occurred in the process of officers physically removing § 87(2)(b) from the motorcycle. § 87(2)(g)
- **Discourtesy:** When he filed the complaint, § 87(2)(b) alleged that PO Morales yelled at him, “Get the fuck off the bike!” However, he insisted during his interview that no officer ever used profanity during the incident. § 87(2)(g)

Recommendations

- **Allegation A—Force: Officers used physical force against § 87(2)(b)**

It is undisputed that officers pulled § 87(2)(b) off his motorcycle and to the ground before handcuffing him. § 87(2)(b) admitted that PO Morales ordered him to dismount and he replied, “I’m not getting off the bike. What am I getting off the bike for?” The officers grabbed him and pushed the motorcycle over (BR05). The motorcycle struck the ground and its exhaust cover was slightly bent (BR06). § 87(2)(b) sustained abrasions and bruising to his shins and left knee from being brought to the ground (BR07-BR08). His back began hurting after the incident and he went to § 87(2)(b) the following night. His chief complaint was lower back pain, and he also had pain in his left lower leg and wrists. He had no back tenderness and X-rays of his spine were unremarkable. He was diagnosed with back pain and prescribed a pain killer and a muscle relaxant (see Privileged Documents).

PO Morales recounted that he requested § 87(2)(b) license and asked him to dismount the motorcycle, and § 87(2)(b) replied, “For what?” PO Morales told § 87(2)(b) his exhaust was too loud and § 87(2)(b) said, “I’m not getting off my bike” (BR09). § 87(2)(b) became agitated and raised his voice, and he repeatedly asked why he had to stop and insisted that he did not have to stop. § 87(2)(b) put his feet back on the motorcycle and revved the throttle. PO Morales hit the “kill-switch” on the motorcycle’s handlebars and again ordered § 87(2)(b) to dismount. § 87(2)(b) again refused to dismount so PO Morales pulled him backwards and off the motorcycle. The motorcycle tipped over and struck the ground.

Sgt. Carela § 87(2)(g)

§ 87(2)(b) claimed that he was able to grab the motorcycle before it fell and that he set it down on the ground (BR10).

Patrol Guide Procedure 209-12 states that an officer who intends to issue a summons returnable to the Environmental Control Board must obtain proof of identity and residence from the violator, and that the violator must be transported to the command if he or she refuses to provide said proof (BR11). An officer can require a motorist to step out of his or her vehicle during a vehicle stop. People v. Robinson, 74 N.Y.2d 773 (1989) (BR15). An officer “may use physical force when and to the extent he or she reasonably believes such to be necessary to effect [an] arrest, or to prevent [an] escape from custody.” N.Y. Penal Law §35.30 (BR12). Patrol Guide Procedure 203-11 requires that an officer use “minimum necessary force” (BR13).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation B—Abuse of Authority: PO Juan Morales frisked** § 87(2)(b)

Although § 87(2)(b) did not allege that an officer frisked him before searching him, PO Morales admitted that he frisked § 87(2)(b) entire body after handcuffing him. He did so to determine if § 87(2)(b) had any weapons. PO Morales did not intend to arrest § 87(2)(b) at this time and simply wanted to conduct further investigation to obtain § 87(2)(b) license and the paperwork for the motorcycle. During the CCRB interview, when asked why he suspected that § 87(2)(b) might have a weapon, PO Morales said, “Only because he was very combative and resisting, so I really didn’t know what the reason behind that was, so I couldn’t really tell.” PO Morales’ legal representative interjected and said, “And would it be fair to say that once you handcuff a person, a prisoner, you’re required to frisk him just to ensure that there are no weapons?” PO Morales answered, “Yes, just to make sure. Once they’re in handcuffs, we’re supposed to frisk—pat down the outside to make sure there’s no weapons, anything like that.” PO Morales admitted that he did not suspect § 87(2)(b) of having a specific type of weapon or suspect that he was carrying a weapon on a specific part of his body. PO Morales’ legal representative again interjected, “Would it be fair to say that, whether you suspect it or not, you’re required if a person’s handcuffed or arrested, detained and cuffed, you’re required by police department regulations to make sure that he has no weapons?” PO Morales answered affirmatively.

A frisk is permissible only if an officer possesses a particularized reasonable suspicion that a suspect is armed and dangerous. People v. Gonzalez, 295 A.D.2d 183 (2002) (BR14). The “search incident to lawful arrest” exception, by its nature, requires proof that an arrest was about to occur or had already occurred at the time of the search. Where no arrest has yet taken place, an officer must have intended to make an arrest if the exception is to be applied. People v. Reid, 24 N.Y.3d 615 (2014) (BR16).

§ 87(2)(g)

• **Allegation C—Abuse of Authority: PO Juan Morales searched** § 87(2)(b)

§ 87(2)(b) alleged that an officer searched his pants pockets after he was handcuffed and removed his wallet from his right rear pocket. He said that this officer was not PO Morales.

PO Morales recounted that § 87(2)(b) admitted that he had identification after he was handcuffed, and that he told PO Morales the identification was in his wallet in his back pocket. PO Morales admitted that he entered § 87(2)(b) back pocket to retrieve his wallet so he could obtain the identification. He denied that he entered any of § 87(2)(b) other pockets.

Sgt. Carela did not think that any officer ever searched § 87(2)(b) but he also did not recall any officer frisking § 87(2)(b)

§ 87(2)(g)

Squad: 14

Investigator: _____ Daniel Giansante _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

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